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THE GUN CONTROL ACT OF 1968

WILLIAM J. VIZZARD*

For three decades, the Gun Control Act of 1968 (GCA) has formed the legal core of national gun policy in the United States. The congressional deliberations leading to the passage of the GCA and companion legislation extended over five years and involved the Departments of Justice and Treasury, the White House, firearms interest groups, and both houses of Congress. At no time before or since has Congress addressed gun control policy with as much breadth or depth.¹ Although the National Firearms Act (NFA) of 1934 imposed strict federal regulation on machine guns and other “gangster” firearms² using taxation legislation, the 1938 Federal Firearms Act (FFA) had proven ineffectual in asserting even minimal federal controls over interstate commerce in ordinary handguns, shotguns and rifles.³ The structure of the GCA emerged largely from observed weaknesses in the existing FFA.⁴

The Dodd Hearings

In early 1958, Senator John Kennedy of Massachusetts introduced legislation to control the importation of surplus military firearms.⁵ Clearly protectionist, the legislation targeted the increase in imported firearms, the great majority of which were military surplus.⁶ Congress acted only to ban the importation of previously exported U.S. military firearms.⁷ The flood of imports continued, fueled by surplus World War II firearms and inexpensive pistols and revolvers.⁸

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1. William J. Vizzard, *The Impact of Agenda Conflict on Policy Formulation and Implementation: The Case of Gun Control*, 55 PUB. ADMIN. REV. 341, 344 (1995) [hereinafter Vizzard, *Agenda*]. Franklin E. Zimring, *Firearms and Federal Law: The Gun Control Act of 1968*, 4 J. LEGAL STUD. 133 (1975).

2. 26 U.S.C. § 5848 (1958).

3. Zimring, *supra* note 1-2, at 140-43.

4. *Id.* at 140.

5. S. 3714, 85th Cong., (1958) (enacted).

6. Zimring, *supra* note 1-2, at 144.

7. 22 U.S.C. § 1934(b) (1958).

8. Zimring, *supra* note 1-2, at 144. *Id.* at 145.

Upon assuming the chairmanship of the Juvenile Justice Subcommittee of the Senate Judiciary Committee in 1961, Senator Thomas Dodd (D-CT) directed the staff to conduct a study of mail order sales of firearms.⁹ After two years of staff study, Senator Dodd introduced his first gun bill, Senate Bill 1975 and opened hearings to generate public interest in the gun issue.¹⁰ The bill required mail-order purchasers of handguns to provide the seller a notarized affidavit stating they were over eighteen years of age and legally entitled to purchase the firearm and restricted the importation of surplus military firearms.¹¹ The bill had input from the Treasury Department and received support from both the firearms industry and the NRA.¹²

After the assassination of President Kennedy with a mail order, surplus military rifle, Senator Dodd amended his bill to include long guns under the mail order restrictions.¹³ The bill died in the Senate Commerce Committee in 1964,¹⁴ but Senator Dodd reintroduced the bill as Senate Bill 14 in January of 1965.¹⁵ Two months later, he introduced a more restrictive bill, Senate Bill 1592, at the request of the administration, and the political battle over gun control began.¹⁶ Although various members of Congress introduced a variety of gun bills during the period between 1964 and 1968, the Dodd Bill became a generic description for all pending legislation, particularly among opponents of firearms control legislation. Between 1938 and 1965, Congress had displayed little discernable interest in gun control legislation; however, external events, administration interest, and public opinion altered the policy dynamics within Congress over the next four years and opened the policy window¹⁷ Events during this period also foreshadowed the form and dynamics of the gun issue for years to come.

The shift, by the leadership of the National Rifle Association (NRA), from cautious support for the original Dodd Bill to modest opposition of Senate Bill 1592 foreshadowed the most significant and lasting change in the dynamics of gun control policy to occur in the twentieth century. The NRA and firearms

9. *Id.* at 145.

10. *Id.*

11. *Id.* Neal Knox, *The 30-Year War for Gun Ownership*, GUNS AND AMMO, Aug., 1988, at PAGE NUMBER.

12. Zimring, *supra* note 1-2, at 146.

13. *Id.*

14. 110 CONG. REC. 18,431 (1964) (statement of Sen. Dodd).

15. 111 CONG. REC. 200 (1965) (statement of Sen. Dodd).

16. *Federal Firearms Act: Hearings Before the Subcomm. to Investigate Juvenile Delinquency of the Comm. on the Judiciary, U.S. Senate, 89th Cong. 1* (1965) [hereinafter *1965 Hearings*] (statement of Sen. Dodd).

17. *Federal Firearms Act: Hearings Before the Subcomm. to Investigate Juvenile Delinquency of the Comm. on the Judiciary, U.S. Senate, 90th Cong. 3* (1967) [hereinafter *1967 Hearings*] (statement of Sen. Dodd). *1965 Hearings, supra* note 13, at 213 (Statement of Franklin Orth, NRA Executive Secretary).

manufacturers had supported Dodd's original bill and the subsequent addition of interstate controls on long guns.¹⁸ Although the official organ of the NRA, *The American Rifleman*, indicated otherwise, the NRA leadership displayed some willingness to compromise with Dodd as late as 1965.¹⁹ Negative response by the membership precipitated a subsequent reversal of direction by the NRA leadership.²⁰ This uprising by a significant portion of the NRA membership owed much to the development of a specialized gun press that catered to the most avid of gun enthusiasts.²¹ The editorial staffs of magazines such as *Guns*, *Guns and Ammo*, and *Gun Week* inalterably opposed gun control in any form and benefited from heightened interest in gun issues.²² By 1965, the leadership and membership of the NRA divided along a fault line separating those tolerant of moderate increases in gun control from those opposed to any significant change in the law.²³ Although the NRA leadership responded to this internal pressure with increased opposition to new legislation, their policy shift failed to satisfy a powerful segment within the membership. This internal dissatisfaction within the NRA provided the impetus for a 1977 coup by the libertarian faction within the organization and the ouster of the more moderate old guard.²⁴ Although the relations between Chairman Dodd and the NRA witnesses remained marginally cordial during the 1965 hearings, the atmosphere had begun to chill. Any hope of compromise between advocates of stricter gun control and the NRA ended after 1965.

The 1965 hearings also shaped the future dynamics of the subcommittee. Over the next three years Dodd assumed the role of spokesman for a series of progressively more restrictive bills drafted by the administration. Relations between Dodd and ranking minority member, Roman Haruska (R-NE), became progressively strained.²⁵ Although his rural constituency and conservative

18. *Id.* at 196, 212 (statement of Franklin Orth). *1967 Hearings*, *supra* note 14, at 495 (statement of Franklin Orth).

19. Knox, *supra* note 10-2, at PAGE NUMBER. *1965 Hearings*, *supra* note 13, at 211-12, 218 (statement of Franklin Orth and Harlon Carter, NRA President).

20. Knox, *supra* note 10-2, at PAGE NUMBER. *1967 Hearings*, *supra* note 14, at 495 (statement of Franklin Orth).

21. *1965 Hearings*, *supra* note 13, at 212 (statement of Sen. Dodd and Franklin Orth).

22. *1965 Hearings*, *supra* note 13, at 618, 623-27 (statement of Sen. Dodd and Thomas J. Siatos, Publisher and Editorial Director of *Guns and Ammo Magazine*). Interview with Neal Knox, Reporter for *Gun Week*, in CITY, STATE (Mar. 1993).

23. *1965 Hearings*, *supra* note 13, at 212, 215 (statement of Franklin and Harlon Carter). Interview with Neal Knox, *supra* note 19-2.

24. JOSH SUGARMANN, NATIONAL RIFLE ASSOCIATION: MONEY, FIREPOWER, AND FEAR 45-52 (1992). OSHA GRAY DAVIDSON, UNDER FIRE: THE NRA AND THE BATTLE FOR GUN CONTROL 34-35 (1993). Interview with Neal Knox, *supra* note 19-2.

25. Interview with Peter W. Velde, Minority Counsel for the Subcommittee and retained close ties to Senator Haruska, in Alexandria, Virginia (Mar. 22, 1993) [hereinafter VELDE],

view of the federal role predisposed Haruska toward a skeptical view on gun control, he lacked any ties to the gun lobby or any personal stake in the gun issue.²⁶ Apparently, the personal relationship between Haruska and Dodd directly influenced committee dynamics and the formulation of policy.²⁷

Both the House and Senate conducted hearings on a number of proposed pieces of legislation between 1963 and 1968. Although these various bills bore different designations during different sessions of Congress, they can be somewhat simplified. The original Dodd proposal, Senate Bill 1975, would have restricted importation of surplus military firearms and required sworn affidavits of eligibility to purchase a handgun by mail. The seller would have been required to mail the affidavit to the chief law enforcement officer of the purchaser's jurisdiction. Dodd reintroduced this same bill as Senate Bill 14 in 1965, and Haruska again introduced essentially the same bill as Senate Bill 1853 in 1967.²⁸ Although Dodd introduced Senate Bill 14, he soon shifted his support and the attention of his subcommittee hearings to Senate Bill 1592, a bill largely drafted by the administration. The majority of the 1965 gun control hearings concerned this bill; which prohibited interstate mail order sales and interstate over-the-counter sales of handguns to individuals, increased dealer fees from one to 100 dollars, extended controls to ammunition, restricted destructive devices and prohibited sales by dealers to minors.²⁹ Existing law already prohibited sales by dealers to felons and certain other classes of persons.

The Administration Ups the Ante

In 1967, Dodd reintroduced Senate Bill, 1592 as Senate Bill 1 but soon introduced Amendment 90 to Senate Bill 1 (hereafter "Senate Bill 1 as amended") in response to administration proposals. Rather than amending the existing Federal Firearms Act, Senate Bill 1 as amended replaced the FFA with a new law. It also extended the interstate prohibition on mail order sales of

noting that the acrimony is often apparent between Senators Dodd and Haruska on both a personal and philosophical level during the hearings. See *Federal Firearms Act, 1968: Hearings on S. 3604 Before the Subcomm. to Investigate Juvenile Delinquency of the Comm. of the Senate Judiciary*, 90th Cong. 592-93 (1968) (statement of James Bennett, President, National Council for a National Firearms Policy) [hereinafter *1968 Hearings*]. See also, ROBERT SHERRILL, SATURDAY NIGHT SPECIAL 68-69 (1973).

26. VELDE, *supra* note 22-1. "My review of Haruska's statements in committee support Velde's view and my research revealed no documentation linking Haruska to the NRA." *Id.*

27. *Id.* Velde contended the Haruska's opposition to much of Todd's legislation resulted largely from his dislike of Dodd and his belief that attempting to steam roll over minority objections. A review of Haruska's questioning during several years of hearings also reveals a very strong emphasis on the rural perspective and concern for the impact of law on individuals. *Id.*

28. *1965 Hearings, supra* note 13, at 12-15. *1967 Hearings, supra* note 14, at 20-23, 31.

29. *1965 Hearings, supra* note 13, at 6-12.

handguns to all guns and prohibited interstate transactions between individuals. Senate Bill 1 as amended also reduced dealer license fees to twenty-five dollars and removed controls on ammunition.³⁰ A companion bill, Senate Bill 1854, placed destructive devices under the NFA as items requiring registration and tax payment.³¹ Senator Haruska had advanced this approach for some time in lieu of placing such items in the FFA.

Senator Haruska's reintroduction of the original Dodd bill as Senate Bill 1853 provided a compromise position for Senators fearing constituencies on both ends of the gun issue. With strong NRA opposition to Senate Bill 1 as amended and an alternative bill to divide support, the probability of passing a comprehensive gun bill appeared low. External events suddenly altered the policy agenda. The assassination of Dr. Martin Luther King Jr. opened the policy window and altered the political dynamics in the Judiciary Committee.³² On April 29, 1968, the Senate Judiciary Committee reported out a bill resembling Dodd's Senate Bill 1 as amended, with the exception of a ban on interstate sales of long guns, as Title IV of the Omnibus Crime Control and Safe Streets Act (hereafter Title IV).³³ On May 23, 1968, the full Senate amended the Omnibus bill by adding Title VII (hereafter Title VII), which prohibited felons and certain other classes of individuals from receiving, possessing or transporting a firearm in or affecting commerce.³⁴ The Senate passed Senate Bill 917 as amended, the Omnibus Act, on May 24, 1968, and sent it to the House.³⁵ The policy window had opened in the Senate, but the House remained a potential obstacle.

Breakthrough

A second assassination pried open further the policy window and assured House passage. On June 5, 1968, an assassin murdered presidential candidate and United States Senator Robert Kennedy. The following day, the House passed the Omnibus Act, including Titles IV and VII.³⁶ Ironically, after years in formulation Title IV never became effective. Before the effective date of implementation, Congress passed the somewhat more comprehensive GCA.³⁷

30. 1967 Hearings, *supra* note 14, at 124-27.

31. *Id.* at 24.

32. VELDE, *supra* note 22-1. Velde stated that the committee was engaged in marking up Haruska's as Title IV of the Omnibus Crime Bill, and that the full committee was evenly divided between the supporters of the Haruska bill and the Dodd bill, with Chairman Eastland favoring the Haruska bill. After the assassination, two proxy votes shifted the balance in favor of Dodd's bill, which the committee passed after deleting restrictions on interstate long gun sales.

33. S. Rep. No. 90-1097 at 1, *reprinted in* 1968 U.S.C.C.A.N. 2112.

34. 114 CONG. REC. 14775 (daily ed. May 23, 1968).

35. *Id.* at 14798.

36. *Id.* at 16300.

37. Pub. L. No. 90-618, 82 Stat. 1214 (Oct. 22, 1968).

The GCA extended interstate restrictions to all firearms and incorporated ammunition.³⁸ It also revised the NFA by the addition of destructive devices to the restricted categories and by restricting future registrations of firearms made or transferred in violation of the law.³⁹

Although Title IV of the Omnibus Act and the later GCA reflected extensive hearings and staff work, Title VII benefited from no such history. At the last minute, the Senate inserted Title VII into its version of the Omnibus Act by voice vote.⁴⁰ Proposed by Senator Russell Long (D-LA) and considered without hearings, the bill suffered from poor drafting which would bedevil its enforcers and confound the courts.⁴¹ Title VII addressed simple firearm possession for the first time at the federal level. The bill included a finding that strongly implied such intent,⁴² and Senator Long's statements on the Senate floor likewise support such an interpretation.⁴³ Apparently, a bill intended to significantly alter federal policy became law with little analysis largely as a political favor to improve its author's image as tough on crime.⁴⁴

The new momentum generated by the Robert Kennedy assassination continued to alter the political dynamics of the gun control issue through the summer and fall of 1968. In earlier years, congressional mail, dominated by gun control opponents, generated fear even among many liberal members of supporting significant legislation.⁴⁵ Although opinion polls reflected broad-based support for stricter controls on firearms, this support failed to translate

38. *Id.* § 921(a)(3).

39. *Id.* § 921(a)(4).

40. 114 CONG. REC. 14775 (daily ed. May 23, 1968).

41. *See* *United States v. Bass*, 404 U.S. 336 (1971). The court contributed the following observation: "the statute does not read well under either view". *Id.* at 339. The court also observed that "the legislative history of (the) Act hardly speaks with that clarity of purpose which Congress supposedly furnishes courts". *Id.* at 346, *citing* *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 483 (1951). Finally, the court reiterated the government's contention that "the statute is not a model of logic or clarity. *Id.* at 347.

42. *See id.* at 353 (Blackmun, J., dissenting).

43. *See* 114 CONG. REC. 14773-75 (daily ed. May 23, 1968) (response of Sen. Long to Sen. McClellan).

44. VELDE, *supra* note 22-1. Velde stated that Sen. Long made a personal appeal to his colleagues for last minute inclusion of Title VII into the Omnibus bill without a hearing based on his perception of needs for the next election. According to Velde, subsequent changes were to be made in committee but the law was passed on a voice vote and no changes could be made. Some Senators and staff members considered the section of the law making possession of a firearm by the employee of a felon unconstitutional. *See also*, 1968 *Hearings, supra* note 22-2, at 69 (statement of Ramsey Clark, U.S. Attorney General). *See also*, *Stevens v. United States*, 440 F.2d 144 (1971) (thoroughly reviewing the legislative history of the bill).

45. 1965 *Hearings, supra* note 13, at 422 (statement of Sen. Joseph Tydings). *Id.* at 1099 (statement of Sen. George McGovern).

into constituent demand.⁴⁶ After the 1968 assassinations of Robert Kennedy and Martin Luther King a groundswell of visible support for more decisive federal action temporarily materialized.⁴⁷

During the summer of 1968, gun control advocates in Congress tested the limits of the new policy dynamics with the introduction of bills calling for registration and licensing of firearms.⁴⁸ Senator Joseph Tydings (D-MD), who replaced Senator Dodd as the most visible congressional proponent of gun control over the next two years,⁴⁹ introduced one of four major bills relating to registration and licensing. Senate Bill 3634 would have established national firearm registration and required a license issued by the Secretary of Treasury to possess a firearm. The bill allowed the states to substitute state licensing for federal licensing. The administration advanced Senate Bill 3691, which mandated federal licensing if the states failed to act.⁵⁰ The Administration proposed the use of licensed federal firearm dealers as licensing agents, following the pattern of hunting and fishing licenses.⁵¹ The Administration bill contained two cumbersome requirements: that applicants provide certification from a doctor regarding their mental state and certification from the local police regarding their residence and lack of criminal record. Similar in structure and intent, Senate Bill 3634 and Senate Bill 3691 both allowed and encouraged the states to develop firearms owner licensing but mandated federal licensing if the states failed to act.⁵²

Senator Edward Brooke (R-MA) and Senator Dodd also introduced registration bills of less sweeping proportions. Brooke's bill, Senate Bill 3637, required registration through local police authorities but not a license to possess a firearm. Dodd's bill, Senate Bill 3604, also required registration but contained no licensing provisions.

Following the passage of the Omnibus Act, the Dodd subcommittee continued gun control hearings focused almost exclusively on these registration and licensing bills.⁵³ Although the summer of 1968 marked the high water mark for gun control on the national policy agenda, none of the

46. See The Gallop Organization, *Eight in Ten Persons Favor Law Requiring Police Permit for Gun*, PUB. OPINION NEWS SERVICE (Jan. 12, 1964).

47. *1968 Hearings*, *supra* note 22-2, at 579-82 (statement of James Bennett, President, National Council for Responsible Firearm Policy); *Id.* at 3 (statement of Sen. Dodd).

48. *Gun Controls Extended to Long Guns, Ammunition*, 1968 CONGRESSIONAL QUARTERLY ANNUAL ALMANAC 225 (1969).

49. Tydings was defeated in 1970 with considerable opposition from gun interests. Although the impact of his support for gun control on the election remains unclear, the defeat came to symbolize the risk of supporting gun control for the next twenty years.

50. See *1968 Hearings*, *supra* note 22-2, at 57-59 (statement of Attorney General Ramsey Clark). S. 3634 90th Cong., 2d Sess. (1968). S. 3691 90th Cong., 2d Sess. (1968).

51. See *1968 Hearings*, *supra* note 22-2, at 58.

52. *Id.* at 59.

53. *1968 Hearings*, *supra* note 22-2.

registration bills came close to passage. In October, Congress passed the GCA to replace Title IV of the Omnibus Act after a spirited debate in both the House and Senate and a flurry of motions by both supporters and opponents of gun control.⁵⁴ The GCA constituted the last major gun control bill to pass Congress until the Firearms Owners' Protection Act of 1986, which reduced a number of the controls imposed by the GCA.⁵⁵ Not until the Brady Act of 1994, would Congress again pass significant control legislation.⁵⁶ The final bill constituted only a modest revision of the already passed Title IV of the Omnibus Act.

The Law

The GCA actually consisted of two distinct subdivisions or titles, located in different titles of the federal code.⁵⁷ In addition, Title VII of the Omnibus Act (hereafter Title VII) was the functional equivalent of a third subdivision of the GCA, although it constituted a separate piece of legislation.⁵⁸ The majority of the GCA, Title I (hereafter the GCA), regulated all firearms and was located in Title 18 of the United States Code (the Criminal Code) as was Title VII. Title II (hereafter the NFA) incorporated the existing National Firearms Act, with minor additions. The NFA remained a tax statute, in law if not in fact, within Title 26 of the United States Code (the Internal Revenue Code). It retained the existing scheme of registration to enforce the making, transfer taxes and special occupational taxes required by the 1934 Act.⁵⁹ The primary changes to the NFA consisted of the addition of destructive devices to the previously enumerated categories of so called gangster weapons, and the termination of authority to register existing NFA firearms after an initial amnesty period.⁶⁰ The category of destructive devices included weapons with a bore exceeding one-half inch in diameter, explosive and poison gas bombs, projectiles with explosive warheads and rockets and missiles.⁶¹ While this change attracted little attention at the time, it conferred upon the Bureau of

54. ROBERT J. SPITZER, *THE POLITICS OF GUN CONTROL* 144-45 (1995).

55. Vizzard, *Agenda*, *supra* note 1, at 344.

56. *Id.* at 343.

57. The use of title is somewhat confusing in this context. Normally used to refer to separate federal codes, it concurrently defines subdivisions in the act.

58. Ultimately incorporated into a single act, the GCA and Title VII were routinely viewed as one piece of legislation by those implementing the law.

59. The NFA did not prohibit machine guns and other regulated firearms but imposed a \$200 tax on the making or transfer of such weapons. The law included registration provisions to assure the payment of the tax in advance. Special occupational tax payers, dealers, and manufacturers, could pay a yearly tax that exempted them from the tax on individual weapons but not from registration requirements. *See* 26 U.S.C. 53 (YEAR).

60. The firearms originally covered by 26 U.S.C. 5845 included machine guns, silencers, short-barreled rifles, shotguns, and other unique fire arms.

61. 26 U.S.C. 5845(f) (1968).

Alcohol, Tobacco and Firearms (ATF) jurisdiction over the primary federal law relating to bombing.⁶² Although future legislation expanded the jurisdiction of the Federal Bureau of Investigation (FBI) over bombings, ATF retained joint jurisdiction in this area and later extended that jurisdiction into commercial arson.⁶³

Between 1934 and 1968, Treasury Department policy allowed persons without criminal records to register NFA firearms possessed in technical violation of the law when the violation was not willful nor the firearm in violation of state law.⁶⁴ The new law provided for a thirty-day amnesty period during which any person possessing an NFA firearm could register it without restrictions.⁶⁵ No information provided in furtherance of registration could be released to state authorities or used to prosecute the registrant for any crime other than false statements in the registration application.⁶⁶ The amnesty and nondisclosure provisions overcame the defense of self incrimination established by *Haynes v. U.S.*⁶⁷ While this legal strategy served to eliminate a short term impediment to enforcing the registration provisions of the NFA, it established a precedent that may prove troublesome in any future effort to pursue general registration or licensing of firearms.⁶⁸

Although the GCA created no comprehensive system of control or regulation of firearms in the possession of individual citizens, it significantly altered the rules governing commercial firearms transactions. It prohibited engaging in the business of manufacturing, importing or dealing in firearms without first obtaining a federal license.⁶⁹ Licensees were prohibited from selling firearms to out-of-state residents, minors, felons, persons under indictment for felonies, fugitives and certain other categories of persons⁷⁰ and required to maintain records of all sales.⁷¹ The law prohibited interstate mail

62. WILLIAM J. VIZZARD, IN THE CROSS FIRE, A POLITICAL HISTORY OF THE BUREAU OF ALCOHOL TOBACCO AND FIREARMS 40-41 (1997) [hereinafter VIZZARD, *Cross Fire*].

63. *Id.* at 64.

64. Author's experience as Special Investigator with Alcohol, Tobacco Tax Division in 1967 and 1968.

65. Pub. L. No. 90-618, 82 Stat. 1214 (Oct. 22, 1968).

66. 26 U.S.C. 5848(a) (1968).

67. *Haynes v. United States*, 390 U.S. 85 (1968). Possessors could no longer claim that the act of registration would subject them to risk of prosecution, thus requiring self-incrimination.

68. The justification for any national firearms registration and licensing system depends largely upon the utility of the registration information for general law enforcement. See William J. Vizzard, *A Systematic Approach to Controlling Firearm Markets*, J. FIREARMS & PUBLIC POL'Y (1997). This precedent if extended to a general registration scheme, would preclude use of that information.

69. 18 U.S.C. § 922(a)(1)(a) (Lexis 1999).

70. *Id.* § 922(b)(1)-(3). *Id.* § 922(d).

71. *Id.* § 922(b)(5).

order sales and tightly restricted intrastate mail order sales.⁷² Manufacturers and importers had to begin identifying every firearm by stamping the name of the manufacturer or importer and a serial number on the receiver.⁷³ Firearms not suitable for sporting purposes and surplus military firearms were restricted from importation.⁷⁴

The GCA prohibited dealers from delivering firearms to felons and several other categories of persons and those same classes of persons from receiving firearms that had moved in commerce,⁷⁵ but failed to address possession by these persons. The GCA also ignored transfers by individuals to felons and other restricted categories, while prohibiting transfers to out of state residents.⁷⁶ Title VII prohibited felons and certain other categories of persons from receiving, possessing or transporting firearms in commerce; however, the categories enumerated by Title VII differed slightly from those in the GCA.⁷⁷ In addition, the question of whether Title VII applied to simple possession remained unanswered for several years. Following the passage of Title VII, the Departments of Treasury and Justice assumed a very cautious posture toward prosecution of felons for possession of firearms. Until the 1971 decision in *United States v. Bass* (hereafter *Bass*),⁷⁸ policy virtually precluded federal prosecution of felons for possession of firearms except in cases where the government could directly prove interstate transportation or receipt by the defendant.⁷⁹ Even after *Bass*, prosecutorial policy remained conservative until 1977, when the Supreme Court affirmed that prior interstate movement of a firearm fulfilled the “in or effecting commerce” element of possession.⁸⁰

Although subsequent statutory changes merged the prohibitions against possession of firearms “in or affecting commerce” by felons and others into the

72. *Id.* § 922(a)(2). *Id.* § 922(c).

73. 18 U.S.C. § 923(i).

74. 18 U.S.C. § 925(d)(3).

75. 18 U.S.C. § 922(d). *Id.* § 922(h). The excepting persons being under 18 years of age for long guns and under 21 years of age for handguns. No restriction on receipt existed for these classes.

76. 18 U.S.C. § 922(a)(5).

77. 18 U.S.C. Appx. 1202(a) (repleaded 1986) applied to persons who had been convicted of a felony, dishonorably discharged for the armed forces, adjudicated mentally incompetent, renounced their citizenship or who were aliens unlawfully in the country. Section 922(h) applied to persons who were under indictment for or convicted of a crime punishable by more than one year imprisonment, fugitives from justice, unlawful users of prohibited drugs, adjudicated mentally defective, or committed to a mental institution.

78. *Bass*, 404 U.S. 336 (1971). Although the Court adopted a restrictive view of the statutory wording that required the government to prove “possession in commerce,” a footnote in the decision suggested that prior movement of the firearm in interstate commerce would fulfill that element. This provided the government with a practical means of charging possession in most cases.

79. Based upon the author’s experience as a Special Agent with the ATF during those years.

80. *Scarborough v. United States*, 431 U.S. 563 (1977).

GCA,⁸¹ Title VII provided the only functional federal restriction on possession for almost a decade. Even the incorporation of the prohibition into the GCA did not address the complexities raised by the need for proof of interstate nexus. Section 922(g) of 18 U.S.C. simply incorporated the same, [possess in or affecting commerce,” language that previously existed in Section 1202(a)]. Thus the requirement to establish interstate nexus in every case, adopted as a result of *Bass*, remained. Although evidence of prior interstate shipment ordinarily fills the “affecting commerce” requirement, firearms seized in their state of manufacture constitute an exception.⁸² The ambiguous syntax of the original Title VII and the failure of its congressional finding to satisfy the interstate requirement have resulted in law that neither restricts its reach to true commerce nor efficiently addresses all possession. The perpetuation and incorporation of the possession restriction demonstrates an apparent congressional intent to establish a federal prohibition against firearm possession by felon and certain other high risk offenders, yet this intent has not translated into corrective legislation to address the faults incorporated in the 1968 law.⁸³

In addition to not directly addressing the possession of firearms by high-risk classes, the GCA provided no authorization for an oversight mechanism to insure that licensed dealers did not transfer firearms to such persons. Although dealers were required to maintain a record of gun disposition and obtain identification and a signed certification of eligibility from the purchaser, they had no means for determining eligibility.⁸⁴ While the original GCA required dealers to submit such reports as the Secretary might require, the Treasury Department made no effort to include a reporting requirement on sales in the implementing regulations.⁸⁵ The Firearms Owners’ Protection Act of 1986 specifically prohibited such a requirement,⁸⁶ and the Brady Law of 1994 instituted required reporting for the sole purpose of screening buyers.⁸⁷

The preamble to the GCA defined its purpose as providing support to state efforts at firearm regulation without placing a burden on legitimate firearm users.⁸⁸ These themes dominated the entire law. The first theme appeared in

81. 18 U.S.C. § 933(g).

82. On some occasions, manufacturers ship to wholesalers in another state, who ship the firearm back to the state of origin. In these cases, prior interstate movement can be documented through dealer records.

83. The improvisation of investigators and prosecutors has reduced pressure to address the problems of drafting. Most firearms have traveled in interstate commerce and thus meet the current standard of federal nexus.

84. See 18 U.S.C. § 923(g)(1)(A) (requiring maintenance of records prescribed by the Secretary); 27 C.F.R. § 178.121(H) (1999) (specifying the required records).

85. Interview with Rex Davis, former ATF Director, in CITY, STATE (Mar. 23, 1993).

86. 18 U.S.C. § 923(g)(1)(A).

87. 18 U.S.C. § 922(s).

88. § 101 (titled Purpose of Public Law 90-618).

the provisions prohibiting acquisition outside one's state of residence, interstate mail order sales, and delivery to out-of-state residents or persons who would be in violation of local or state law by possessing such a firearm. The second theme appears in a number of provisions including: exemptions for purchase of guns in contiguous states, provisions for intrastate mail order sales by dealers, and provision for replacement of guns lost or broken by non-residents on hunting trips. Presumably, this concern about placing burdens on individuals accounts for the lack of controls on transactions between individuals. Concerns about the burden of licensing on small rural businesses manifested themselves in the ten dollar yearly license fee and concerns for collectors resulted in the collector license for curios and relics.⁸⁹

Structural Issues

A fundamental deficiency in the law resulted from the failure to define the term "engaged in the business of dealing in firearms". Although the law required any person engaged in this activity to obtain a license and provided felony penalties for failure to do so,⁹⁰ it included no definition or statutory presumption to clarify this crucial term. This lack of definition was the source of much of the subsequent conflict over the implementation of the law and generated considerable difficulties for gun enthusiasts and law enforcement.⁹¹ The ambiguity resulting from a failure to define "engaging in the business" interfaced with other structural shortcomings to generate years of conflict over the entire licensing process.⁹² The law required the issuance of a dealer license within sixty days to any applicant declaring an intention to engage in the business from a premises, unless the applicant was under 21 years of age or fell into the one of the categories of persons prohibited from possessing firearms.⁹³ These minimal criteria, combined with a license fee of only ten dollars per year, assured issuance of licenses to numerous individuals desiring the convenience of a license but lacking actual intent to engage in a legitimate business enterprise.⁹⁴ Because Congress granted no discretion in the issuance of licenses, the ATF could address this issue only after an inspection had revealed a failure to engage in the business. This placed ATF in the awkward position of revoking or denying renewal of a license for failing to engage in the

89. 18 U.S.C. § 923(b). 27 C.F.R. § 178.11 (defines curios and relics).

90. 18 U.S.C. § 922(a)(1).

91. VIZZARD, *Cross Fire*, *supra* note 59, at 67-68.

92. *Id.* See also Phillip J. Cook et al., *Regulating Gun Markets*, 86 § J. Crim. L. & Criminology 59, 75-76 (1995).

93. 18 U.S.C. § 923(d)(2).

94. Possession of a license allows an individual to order firearms directly from a variety of wholesalers, often at substantial savings.

business rather than for some intentional violation of the law or the regulations.⁹⁵

Although many license applicants had no intent of carrying on a commercial enterprise, many persons who actually sold firearms commercially resisted licensing and its requirements to conduct business from a fixed premises and maintain records of purchasers.⁹⁶ Thus, ATF found itself concurrently prosecuting unlicensed dealers for what appeared to be casual sales, while encouraging other casual sellers to surrender their licenses. The results proved disastrous for ATF, although the contradictions existed more in appearances than fact.⁹⁷ These problems could have easily been avoided with higher dealer fees, a definition of “engaging in business” based on the number of sales or offers per year, modest licensing discretion and elimination of the requirement that licensees engage in the business.⁹⁸ Efforts at minimizing the burden on licensees and restriction of bureaucratic discretion generated serious implementation problems.

As with many federal regulatory statutes, the GCA granted authority to the ATF to promulgate regulations spelling out specific procedures under the law.⁹⁹ While regulatory agencies may exercise significant discretionary authority through administrative regulations, this has not proven the case for the regulations authorized under the GCA. The regulations restrict themselves to filling in routine details for activities spelled out in the law. In light of the hostile congressional reaction to the only effort at utilizing the regulations to increase the reach of the statute, the narrow drafting appears to reflect congressional will.¹⁰⁰

Thus, the GCA and Title VII imposed procedures on persons in the gun business and established classifications for persons ineligible to receive and possess firearms from dealers or in interstate commerce. With the exception of the NFA restrictions on machine guns and certain other unusual firearms, the law applied to all modern firearms equally.¹⁰¹ Individuals, other than felons and certain other prohibited persons, were affected little, by the law. Although most persons could not acquire a firearm outside their state of residence, only a

95. VIZZARD, *Cross Fire*, *supra* note 59, at 67. The ATF never pursued a policy of revocation, but routinely refused to renew licenses. More often they convinced the licensee to surrender his license voluntarily.

96. *Id.*

97. *Id.* at 66-68.

98. The purpose of regulatory law and licensing is to assure compliance with procedures or competency. The desire or lack thereof to make sales is an irrational criterion for qualification. A fee adequate to cover issuing and inspection costs would have limited the number of licenses without placing the government in this irrational position.

99. See 18 U.S.C. § 926(a); 27 C.F.R. §§ 178, 179 (contains regulations).

100. VIZZARD, *Cross Fire*, *supra* note 59, at 55-56.

101. 18 U.S.C. § 921(a).

small minority of persons desired to do so.¹⁰² The law terminated the nation's totally laissez faire policy on gun commerce. Although proceeded by extensive hearings, the law generated numerous implementation problems.

In Retrospect

Events surrounding the passage of the GCA provide some insight to the policy process and the nature of gun control as an issue. From the interest group perspective, the events present a rather straight forward and well-defined scenario with the groups divided into two fairly discreet camps. The events differed from a classic clash of interest groups only in that the pro-control advocates included neither a broad-based organization specifically committed to gun control or any organization with an economic stake. The only organized special interest group solely devoted to gun control, the National Council for Responsible Firearms Policy, consisted of only about fifty prominent, though not essentially powerful, citizens.¹⁰³ Although the pro-control position received some support from groups with more widespread membership, such as the International Association of Chiefs of Policy (IACP) and the American Bar Association, these groups pursued a variety of interests and issues other than firearms.¹⁰⁴ The pro-control forces did enjoy two key sources of support. The Johnson Administration consistently supported a more comprehensive federal gun statute, although the Justice Department provided more support than did the Treasury Department. Justice lawyers drafted the most restrictive proposals, and Justice officials testified in their support. Although less active on policy formulation, Treasury officials consistently supported the administration position.¹⁰⁵ The advocates of control also enjoyed widespread support in most of the national media.¹⁰⁶

102. The combination of excluding firearms manufactured before 1898 and creating a collector license for firearms over 50 years old allowed substantial interstate shipment of collector arms. Individuals could also obtain firearms from out of state by having them shipped through a dealer in the state of acquisition.

103. See *1967 Hearings*, *supra* note 14, at 841. (statement of Leonard S. Blondes, Vice President of the National Council for a Responsible Firearms Policy).

104. Representatives of both groups appeared on several occasions before Congressional committees in support of the Dodd bills and IACP supported both licensing and registration. See *1968 Hearings*, *supra* note 22-2, at 526 (statement of Quinn Tamm).

105. A reading of testimony by Justice and Treasury representatives reflects that Justice was clearly in the lead on policymaking while Treasury was more focused on details of implementation. At congressional hearings, Justice was extensively represented by the Attorney General while an Assistant Secretary or the Commissioner of Internal revenue usually represented Treasury. Justice's dominant policy role became most clear in 1968 with the introduction of licensing and registration proposals.

106. See Rep. John V. Lindsay, *Speaking Out—Too Many People Have Guns*, SATURDAY EVENING POST, Feb. 1, 1964 at 12. *Fire at Will*, WASH. POST., June 26, 1968, at A1. *Guns Must*

The opponents more closely approached the classic interest group model. First among equals, the NRA benefited directly from the heightened interest generated by the legislative hearings and debates. Its membership rose rapidly during this period, reaching 700,000 by 1965 and 1,000,000 by 1968.¹⁰⁷ Although it supported Senator Haruska's bill as an alternative to more restrictive legislation, the NRA solidified its position of leadership in opposition to all other control proposals with support from associations of arms collectors, manufacturer and shooters. The membership of these groups overlapped substantially, in fact, most members of these other groups were likely NRA members.¹⁰⁸ Although some have characterized the opposition as a classic economic interest group with the NRA acting as a front for arms manufacturers, the record provides little support for this interpretation.¹⁰⁹

In the case of gun control during the 1960's, the interest groups, or factions in Madison's words, did not resemble the general concept of interest groups based on economic interest, class interest, geography or ethnicity. Control advocates consisted of a loosely organized elite, focused on a perceived public interest issue with support from the administration and presumably from much of the public. Although principally composed of narrow special interest groups, control opponents enjoyed a very broad-based support that did not grow primarily from economic self-interest. While this support was most concentrated in rural areas it spanned class and geography.

Advocates for both positions utilized similar strategies to prevail. Political theorist E. E. Schattschneider characterized advocates in the American political system as expanding political conflicts by attempting to bring the audience into the conflict.¹¹⁰ Both sides followed this pattern. The advocates used the press and the hearings themselves to create demand for legislation. The opposition utilized the special interest press and direct mailings for the same purpose,

Go, ADVERTISING AGE, June 17, 1968, at 1. James V. Bennett, *The Gun and How to Control It*, N.Y. TIMES MAGAZINE., Sept. 25, 1996, at 34.

107. *1965 Hearings*, *supra* note 13, at 212 (statement of Franklin Orth). *1968 Hearings*, *supra* note 22-2, at 399 (statement of Harold Glassen).

108. In the author's experience virtually all competitive shooters and arms collectors are NRA members. Although many hunters are not, those who are members of outdoors associations likely are. In some cases, those who testified for those groups also held key positions in the NRA. *See 1965 Hearings*, *supra* note 13, at 296 (statement of C. R. Gutermuth, Vice President of Wildlife Management Institute).

109. The Dodd bill restricted imports of firearms, a benefit for domestic manufacturers, yet the NRA consistently opposed the bill. The Dodd bill also potentially benefited retailers of firearms and ammunition by controlling mail order sales, thus reducing competition for most retailers. On the first day of the 1968 hearings, Sen. Dodd announced the support of several manufacturers of firearms. *See 1968 Hearings*, *supra* note 22-2, at 2. This constituted a major break with the NRA position.

110. E. E. SCHATTSCHNEIDER, *THE SEMISOVEREIGN PEOPLE* 2 (1960).

often times characterizing the proposed legislation as being far more restrictive than it in fact was.¹¹¹

The crime control paradigm dominated and framed the policy discussion.¹¹² In the early hearings, the impact on crime of sales to out-of-state residents by mail order and over the counter transactions received considerable attention.¹¹³ As hearings progressed, advocates repeatedly stressed the number of killings with guns and rising crime rates. The evidence most cited was the low crime rates in nations with strong gun control laws and the relatively low homicide rate in New York and other high control environments compared to Houston, Phoenix, and other low control cities.¹¹⁴ Advocates also raised sovereignty and social order arguments when addressing militant groups and the riots.¹¹⁵ The examination of interstate movement of firearms to thwart state restrictions more closely approximated policy analysis than did other testimony to the various committees.

Destructive devices and machine guns received substantial attention in the 1965 Senate hearings, even though there was very little controversy about controlling the former and the latter was already under federal legal control.¹¹⁶ After the reports of sniping during the Newark and Detroit riots the focus shifted more toward social order.¹¹⁷ On occasions, proponents challenged the most sacred sovereignty argument of opponents by questioning their interpretation of the Second Amendment as an absolute, individual right.¹¹⁸ They did not, however, rely heavily upon a sovereignty argument, even when opponents continually cited potential impact on hypothetical individuals. Advocates showed little interest in challenging the legitimacy of applying individual level analysis to public policy or the language of individual rights. Instead, they generally attempted to minimize the potential impact of proposals on individuals. No doubt, this reflected the discomfort most Americans feel with collective rights and state authority.

111. See NRA bulletin (Apr. 9, 1965) (in reference to S. 1592).

112. See VIZZARD, *supra* note 1, at 345 for a detailed description of the four paradigms of gun control: sovereignty, cultural, crime control, and public health.

113. See 1965 Hearings, *supra* note 13, at 274-81 (statement of Carl Miller, Chicago Police Dept.), at 343-73 (statement of Richard R. Caples, Comm., Dept. of Pub. Safety, Boston, Mass.), at 394-407 (statement of Arthur J. Sills, Attorney General) and at 495-503 (statement of James V. Bennett).

114. See 1968 Hearings, *supra* note 22-2, at 615-57 (statement of Ramsey Clark), at 88-103 (statement of John V. Lindsay) and at 113-18 (statement of John Glenn, Jr.).

115. 1967 Hearings, *supra* note 14, at 997-99 (statement of Richard J. Hughes).

116. See 1965 Hearings, *supra* note 13, at 133-60 (statement of Merton Howe) and at 160-185 (statement of J. C. Gonzalez).

117. See 1967 Hearings, *supra* note 14, at 997-1030 (statement of Richard J. Hughes) and at 1052-1062 (statement of Quinn Tamm).

118. 1968 Hearings, *supra* note 22-2, at 566 (statement of Lawrence Speiser).

Gun control opponents also addressed the crime control paradigm with arguments that criminals would never comply with any gun law and cited the homicide rate in low control cities such as Milwaukee.¹¹⁹ Yet opponents proved far more willing than advocates to shift from crime control to other conceptual frameworks. The favorite argument was the sovereignty/individual rights paradigm. Although opponents occasionally used self-defense as a means of invoking this context, they more often addressed individual rights. Repeatedly, opponents characterized the impact of proposed legislation as denying rights to individual gun owners.¹²⁰ In addition, opponents argued that the federal government would be intruding into the sovereignty of the states.¹²¹ Curiously, some opponents concurrently advocated HR6137, a bill that would have made virtually every violent crime involving a firearm a federal offense.¹²² For opponents, several key symbols were clearly of paramount importance. New York's Sullivan Law provided the ultimate symbol of evil.¹²³ The symbol took on added importance during the period when New Jersey passed a permissive licensing law that covered both long guns and handguns.¹²⁴ Opponents repeatedly invoked the symbols of freedom, individual rights and the Constitution. During the 1965 hearings, advocates displayed destructive devices such as rocket launchers, presumably in an effort to symbolically demonize the firearm trade.

No clear winner emerged from the gun control policy battle of the 1960s. Control advocates succeeded in passing the GCA, largely due to events external to the policy arena. At first inspection, the law appears to constitute a significant policy shift. Measured by impact, however, the policy shift appears more incremental than radical. At the law's passage, control advocates expressed concern with the fact that over 100,000 individuals and corporations held federal firearms licenses, and that at least a quarter of these licensees were not legitimately engaged in business.¹²⁵ Nearly three decades later, the number of dealer licenses had increased nearly three-fold with the majority still issued

119. See *1968 Hearings, supra* note 22-2, at 468-526 (statement of Rep. John Dingell).

120. See *1965 Hearings, supra* note 13, at 185-94 (statement of Harry R. Woodward), at 195-215 (statement of Franklin Orth), at 241-43 (statement of Sen. Paul Fannin), at 247-54 (statement of Sen. Gordon Allott), at 254-58 (statement of Thomas Kimball) and at 269-71 (statement of Harmon C. Leonard). See also *1967 Hearings, supra* note 14, at 156-58 (statement of John Saylor), at 152-56 (statement of Sen. John Dingell), at 438-44 (statement of Harold Glassen), at 584-91 (statement of Robert Dennis) and at 598-604 (statement of James Jungroth).

121. See *1967 Hearings, supra* note 14, at 662 (statement of Neal Knox). See also *1968 Hearings, supra* note 22-2, at 395 (statement of Franklin Orth); and *1967 Hearings, supra* note 14 at 152-56 (statement of Sen. John Dingell).

122. See *1967 Hearings, supra* note 14, at 634 (statement of Leon C. Jackson).

123. *Id.* at 418, 504, 507 and 646; *1968 Hearings, supra* note 22-2, at 202, 473 and 542.

124. See *1968 Hearings, supra* note 22-2, at 190, 201.

125. See *1967 Hearings, supra* note 14, at 40 (statement of Under Secretary of the Treasury Joseph J. Barr).

to persons not legitimately engaged in business.¹²⁶ The volume of firearm sales continued to increase after the passage of the law,¹²⁷ and few effective restrictions were placed on unlicensed traffickers in firearms.¹²⁸ Although activity by both advocates and opponents declined briefly with the passage of the GCA, soon both sides renewed their activities.

The failure to pass more restrictive and comprehensive legislation, despite the alignment of public opinion, a sympathetic press and active administration support, raises a most interesting policy question. Although many have attributed this result entirely to the institutional power of the NRA, the record suggests more complex answers. At the Senate subcommittee level, personal conflicts between the ranking minority and majority members prevented compromise.¹²⁹ The full committee split evenly between support and opposition, but the chair opposed gun control.¹³⁰ Since the primary momentum for action resided in the Senate, this severely reduced the probability of a more restrictive bill emerging from committee.

The Senate presented particular structural problems for gun control legislation. The issue broke down largely on rural versus urban lines. The structure of the Senate provided rural legislators disproportionate power to prevent passage of strict controls. A review of the hearings reveals that numerous Senators and House Members from rural states felt a need to not only oppose the Dodd and Administration bills but also to testify in committee against them.¹³¹ The intense personal opposition of a few key members, such as John Dingell and Robert Sikes, reinforced the existing ideological and political reservations of their rural and conservative cohorts.¹³² An additional center of resistance formed around ideological conservatives. For example, Strom Thurmond and Roman Haruska who opposed the prevailing view that the Interstate Commerce Clause could be interpreted to give the federal government power over acts within states.¹³³

None of these obstacles might have proven insurmountable if public opinion had been translated into a focused demand for action, but it did not. With the exception of the short period after the Robert Kennedy assassination,

126. See COOK et. al, *supra* note 89. The numbers of licensees are documented by ATF licensing figures and the relative proportion of "legitimate" dealers is confirmed by my experience as a supervisory special agent with ATF until 1994.

127. GARY KLECK, GUNS AND VIOLENCE IN AMERICA 49-51 (1991).

128. See COOK ET. AL, *supra* note 89; VIZZARD, *supra* note 65.

129. VELDE, *supra* note 22.

130. *Id.*

131. See 1967 Hearings, *supra* note 14, at 163 (statement of Sen. Bourke Hickenlooper), at 415 (statement of Sen. Frank Church) and at 882 (statement of Sen. Peter Dominick).

132. Both served on the NRA Board of Directors.

133. See 1968 Hearings, *supra* note 22-2, at 635-50 (questioning of Attorney General Ramsey Clark by Sen. Thurmond); See 1967 Hearings, *supra* note 14, at 1018 (questioning of Gov. Richard Hughes by Sen. Roman Haruska).

the public displayed little active interest in the issue. Because opposition crossed party lines, party discipline proved ineffective for advancing control legislation, as it has until the early 1990s.¹³⁴ Much as with civil rights before the 1960s, a few key Democrats from southern and rural areas proved critical to the opposition even when the Administration strongly supported a bill.

No doubt, the lack of preparation and organization on the part of policy advocates, the administration and the bureaucracy played a significant role in limiting their policy success. Political scientist Nelson Polsby cited the failure to pass more significant firearms legislation in 1968 as a classic example of failure of a policy initiative due to inadequate preparation by advocates.¹³⁵ The advocates lacked organization, and Vietnam and the War on Poverty occupied the majority of the administration's interest and resources. The jurisdictional split between Treasury and Justice exacerbated the lack of preparation and policy coordination by the bureaucracy.

That the passage of the GCA did not mark the beginning of an incremental process of increasing control seems less surprising in retrospect than many would have believed at the time. In many ways, 1968 marked the official end of an era. The election of Richard Nixon signaled the reversal of a trend toward an expanded federal role in domestic social policy, which began with the 1932 election of Franklin Roosevelt. Although Nixon's rhetoric on decentralizing domestic policymaking and reversing the federal government activism may have exceeded his actions, momentum had shifted. After a caretaker Ford Administration, Jimmy Carter attained the presidency by campaigning against the Washington bureaucracy, only to be defeated four years later by the ultimate symbol of decentralization, Ronald Reagan. The 1970s brought the abolition of federal controls over airline fares and service, shipping rates and saving and loan operations. Scholars began to question the assumptions of interest group liberalism, and, by the end of the decade, many embraced public choice theory.

Rather than the next incremental steps in gun control, the decade of the 1970s would see government emphasis shift toward implementation of existing law, while interest groups, on both sides, solidified and intensified their positions.¹³⁶ If the measure of a policy change is the degree to which it changes social behavior, then the policy changes of 1968 were modest.

134. Interviews with both current and former staff members of Congress cited the inability to invoke party discipline as a key factor in the inability to pass firearms legislation prior to the Brady Bill.

135. NELSON W. POLSBY, *POLITICAL INNOVATION IN AMERICA: THE POLITICS OF POLICY INITIATIONS* 170 (1984).

136. VIZZARD, *Cross Fire*, *supra* note 59, at 52-6.